

Exhibit A

Hearing Demonstratives

Entropic Communications, LLC v. Dish Network Corp. et al.

Case No. 2:23-cv-1043-JWH-KES

April 11, 2024

Non-Confidential Version

Standing Issues

Contract Claims

Case 2:23-cv-01043-JWH-KES Document 316 (Ex Parte) Filed 02/06/24 Page 1 of 108
Page ID #:19250

FILED UNDER SEAL PURSUANT TO ORDER OF COURT DATED 1/2/24 (ECF 310)

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16 IN THE UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION
18 ENTROPIC COMMUNICATIONS, LLC, Plaintiff
19 v. Case No. 2:23-cv-1043-JWH-KES
20 DISH NETWORK CORPORATION, DEFENDANTS DISH NETWORK
21 CORPORATION; DISH NETWORK
22 CORPORATION; DISH NETWORK
23 SERVICE LLC; DISH NETWORK
24 SERVICE LLC; DISH
25 NETWORK SERVICE LLC; AND
26 DISH NETWORK CALIFORNIA
27 SERVICE CORPORATION.
28 Defendants.
JURY TRIAL DEMANDED
Dissent Judge: Hon. John W. Holcomb
Magistrate Judge: Hon. Karen E. Scott
DISH'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO COMPLAINT
Case No. 2:23-cv-1043-JWH-KES

DISH Counterclaim Complaint
D.I. 316

24 98. Entropic has breached section 5.1.1 of the MoCA IPR Policy. Section
25 5.1.1 provides that Entropic must “offer to license” its “Essential Patent Claims to the
26 extent necessary to use, make, have made, offer for sale, sell, and import” products
27 complaint with MoCA standards on a “non-exclusive, non-sub-licensable, world
28 wide” basis “on fair, reasonable and nondiscriminatory terms and conditions
1 (collectively, ‘**RAND**’) . . .” Entropic has breached section 5.1.1 at least because it
2 has failed to provide DISH with a RAND-compliant license offer.
3 99. Entropic has also breached section 7.2 of the MoCA IPR Policy. Section
4 7.2 provides that “terminated Alliance Part[ies] shall be entitled to request or require
5 any Alliance Party to license such Alliance Party’s Essential Patent Claims under
6 Section 5.1 (RAND Licenses), but only to the extent necessary to use, make, have
7 made, offer for sale, sell and import” products complaint with MoCA standards
8 “approved by the Board of Directors prior to such expiration or termination.” To the
9 extent DISH products implement any part of any MoCA Standard, Entropic has
10 breached section 7.2 at least because it has failed to provide DISH with a RAND-
11 compliant license offer.

Contract Claims

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18 ENTROPIC COMMUNICATIONS, LLC.
19 Plaintiff
20 v.
21 DISH NETWORK CORPORATION;
22 DISH NETWORK LLC; DISH
23 NETWORK SERVICE LLC; AND
24 DISH NETWORK CALIFORNIA
25 SERVICE CORPORATION.
26 Defendants.
27
28 DISH'S ANSWER, AFFIRMATIVE
29 DEFENSES AND ADDITIONAL DEFENSES
30 AND COUNTERCLAIMS TO COMPLAINT
31 Case No. 2:23-cv-1043-JWH-KES

DISH Counterclaim Complaint D.I. 316

14 108. MaxLinear has breached Section 5.1.2 of the MoCA IPR Policy. Section
15 5.1.2 provides that “[a]ny sale, assignment or transfer by an Alliance Party . . . to an
16 unaffiliated third party of an Essential Patent Claim shall be subject to the terms in
17 this IPR Policy” and “any agreement for transferring or assigning Essential Patent
18 Claims include a provision that such transfer or assignment is subject to existing
19 licenses and obligations to license imposed on the Alliance Party by this Agreement
20 and the Alliance Bylaws.” MaxLinear breached Section 5.1.2 at least because it failed
21 to transfer the Asserted Patents “subject to the terms” of the IPR Policy, nor did
22 MaxLinear include any provision in the agreement transferring the Asserted Patents
23 to Entropic that the transfer was subject to the obligations imposed by the MoCA IPR
24 Policy.

25 109. MaxLinear has also breached Section 4.1.2 of the MoCA IPR Policy. In
26 Section 4.1.2, MaxLinear “represent[ed], warrant[ed], and agree[d] that it has not and
27 will not intentionally transfer or otherwise encumber its patents that reasonably may
28 contain Essential Patent Claims for the purpose of circumventing the obligation to
1 grant licenses contained in this IPR Policy.” MaxLinear breached Section 4.1.2 by
2 transferring the Asserted Patents without requiring Entropic to agree to license the
3 Asserted Patents on RAND terms and (as described more fully below) by attempting
4 to intentionally circumvent the RAND promise.

DISH Amended Counterclaims

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17 v. Defendants
18 DISH NETWORK CORPORATION; DISH
19 NETWORK SERVICE LLC; AND
20 DISH NETWORK CALIFORNIA
21 SERVICE CORPORATION. Plaintiff's COMPLAINT
22
23 Defendants. Plaintiff's COMPLAINT
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3 69. In line with this stated goal, MoCA routinely promoted the use of MoCA
4 technology by non-members. For example, MoCA published brochures urging in-
5 home television service providers and installers, such as the DISH Defendants, to
6 adopt MoCA technology. *See, e.g.*, Ex. 10. Such promotion did not indicate that a
7 company need be a member of MoCA in order to avoid exorbitant non-RAND patent
8 licensing demands. *See id.*

DISH Counterclaim Complaint

D.I. 316 at 84-85

DISH Amended Counterclaims

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19 NETWORK SERVICE LLC; AND
20 DISH NETWORK CALIFORNIA
21 SERVICE CORPORATION. Defendants.
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23 DEFENDANT DISH NETWORK
24 CORPORATION; DISH NETWORK
25 SERVICE LLC'S ANSWER
26 AFFIRMATIVE DEFENSES AND
27 COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT
28 DEFENDANT DISH NETWORK
29 CALIFORNIA SERVICE CORP.'S
30 FIRST AMENDED ANSWER
31 AFFIRMATIVE DEFENSES AND
32 COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT
33 JURY TRIAL DEMANDED
34 District Judge: Hon. John W. Holcomb
35 Magistrate Judge: Hon. Karen E. Scott
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37 DISH'S ANSWER, AFFIRMATIVE
38 AND ADDITIONAL DEFENSES AND
39 COUNTERCLAIMS TO COMPLAINT
Case No. 2:23-cv-1043-JWH-KES

22 41. Original Entropic acknowledged its obligation to comply with the MoCA
23 IPR Policy. In its 2012 Annual Report filed with the U.S. Securities and Exchange
24 Commission, it stated that, “[i]n connection with our membership in MoCA, we are
25 required to license any of our patent claims that are essential to implement the MoCA
26 specification to other MoCA members under reasonable and non-discriminatory
27 terms.”

DISH Counterclaim Complaint

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Extrinsic Evidence Must Be Considered



In 2006, Plaintiff issued an exclusive license to TAKU Corporation ("TAKU License") for all of Plaintiff's "patent rights and know-how relating to the manufacture, sale, and distribution of pharmaceuticals, over and above the exclusive rights and know-how relating to the treatment of multiple sclerosis . . . so that TAKU Corporation can manufacture, sell, and distribute the TAKU Product." (¶ 23, Plaintiff's First Amended Complaint). Plaintiff also issued a sublicense to Seirus International USA ("Seirus") through Seirus' wholly-owned subsidiary, Ace Trading, S.A., in 2007. (¶ 24, Plaintiff's First Amended Complaint). Plaintiff, Novartis, and Teva Pharmaceutical Industries, Ltd. ("Defendant's joint company"), acquired TAKU in 2010. (¶ 25, Plaintiff's First Amended Complaint). Plaintiff's TAKU License obligations are to Plaintiff, as well as the obligations of the Seirus Sublicense. (¶¶ 11, 12).

The TAKU License contains two provisions that are particularly significant here because they relate to the Plaintiff's breach of contract claim. The first provision is Plaintiff's exclusive right to "make, use, and sell" the TAKU License. (¶ 26, Plaintiff's First Amended Complaint). The second provision is Plaintiff's right to "make, use, and sell" the TAKU License "in exchange for the TAKU License." (¶ 27, Plaintiff's First Amended Complaint). Plaintiff has not yet exercised its right to make, use, and sell the TAKU License. (¶ 28, Plaintiff's First Amended Complaint). Plaintiff has, however, granted a sublicense to Seirus International USA ("Seirus") through Seirus' wholly-owned subsidiary, Ace Trading, S.A., in 2007. (¶ 24, Plaintiff's First Amended Complaint). Plaintiff, Novartis, and Teva Pharmaceutical Industries, Ltd. ("Defendant's joint company"), acquired TAKU in 2010. (¶ 25, Plaintiff's First Amended Complaint). Plaintiff's TAKU License obligations are to Plaintiff, as well as the obligations of the Seirus Sublicense. (¶¶ 11, 12).

George M. Delano, Martin Lewis, Cohen, Glotzbach and Pepe, PC, San Diego, CA, Lawrence A. Schloss, Pro Hac Vice, Michael S. McGuire, Esq., Pro Hac Vice, Miami, Lewis, Cohen, Glotzbach and Pepe, PC, Boston, MA, for Plaintiff

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

Anthony J. Battaglia, United States District Judge

*1 Presently pending before the Court is Defendant Teva Pharmaceutical Industries, Ltd.'s ("Defendant") motion to dismiss Plaintiff's First Amended Complaint (Doc. No. 21). The action is fully briefed. (Doc. Nos. 27-33, and the matter is ready for determination on the papers. For the reasons stated herein, the Court GRANTS IN PART AND DENIES IN PART the motion to dismiss.

BACKGROUND

Plaintiff The Scripps Research Institute ("Plaintiff") is a California non-profit private biomedical research institution. (First Amended Complaint ("FAC"), Doc. No. 14, ¶ 1).

After further research and development, Plaintiff applied for regulatory approval of a substitute under the name Myalekemy for treatment of multiple sclerosis. (¶¶ 32-33). Approval was granted by the U.S. Food and Drug Administration on March 23, 2010. (¶ 34). Defendant made the required sales election pursuant to such regulatory approval, commencing with Plaintiff's first sale of Myalekemy in the United States on March 23, 2010. (¶ 35). Plaintiff and Defendant entered the proxy negotiations of TAKU License Section 3.1, which state:

*2 Duties of Royalty Obligations. The royalty obligations of TAKU as to each LICENSED PRODUCT

Scripps Rsch. Inst. v. Teva
Pharms. Int'l GmbH,
2022 WL 20033436, at *4
(S.D. Cal. Nov. 17, 2022)

"Plaintiff's breach of contract claim survives because the **extrinsic evidence alleged by the Plaintiff**, whether admissible or not, must be considered on the merits by the Court. **Where a contract is ambiguous and extrinsic evidence is introduced**, the Ninth Circuit has found '**[t]he case must proceed beyond the pleadings** so that the court may consider the evidence.' *A. Kemp Fisheries, Inc.*, 852 F.2d at 496 n.2. As such, Defendant's motion to dismiss Plaintiff's breach of contract claim is DENIED."

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Entropic Complaint

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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 ENTROPIC COMMUNICATIONS, LLC, Case No. 2:23-cv-01043
16 Plaintiff. ORIGINAL COMPLAINT FOR
17 DISH NETWORK CORPORATION, PATENT INFRINGEMENT
18 DISH NETWORK LLC, DISH
19 NETWORK SERVICE, LLC, AND
20 DISH NETWORK CALIFORNIA
21 SERVICE CORPORATION.
22 Defendants.
23
24
25
26
27
28

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

11 84. The Accused MoCA Instrumentalities are compliant with the provisions
12 of MoCA 1.0, 1.1., and/or 2.0, as described in the '518 Patent claim chart, Exhibit B.

5 93. The claims of the '518 Patent are essential to practicing at least MoCA
6 standards versions 1.0, 1.1, and/or 2.0.

Entropic Complaint
D.I. 1

D.I. 1 at 16 ↗ 17

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FEDERAL REPORTER, 3d SERIES

ISGG
SUFFICIENT TO
THE JONES ACT CAUSES PRICES IN THAT MARKET TO
BE HIGHER THAN THEY OTHERWISE WOULD BE.
REMARKABLY, *GEN RIGHTS* REQUIRES
MORE.

RONALD R.
ALAN WALTER,
LEWIS H. COOPER,
& PROCEDURE
IN JONES ACT
LITIGATION IN *GEN RIGHTS* FAIL
TO RECOGNIZE THAT "RESTRICTION OF AVAIL-
ABLE SUPPLY INEVITABLY INCREASES THE PRICE
ABOVE A CHANGE IN THE DEMAND SCHEDULE".

In accordance with basic economic
principles, it is axiomatic to show that a
challenged statute has caused an increase in
price by showing that it has decreased
supply. But *Gen Rights* prevents plain-
tiffs from establishing causation in this
manner. Plaintiffs can show that the
statute actually "directs manufacturers or
dealers to raise the price of regulated"
goods. 98 F.3d at 1130. This contradicts
the rule that causation may be inferred
"causation may be found if there are
multiple links in the chain connecting the
defendant's unlawful conduct to the plain-
tiff's injury." *Medusa v. Garcia*, 708 F.3d
1009, 1016 (9th Cir. 2013). As long as
plaintiffs can show "without relying on
speculation or guesswork" that challenged
governmental conduct is "at least a sub-
stantial factor" behind the injury, they can
establish causation. *Id.* The law of supply
and demand requires no specification
or guesswork, so there should be little
doubt that a statute reducing supply is at
least a substantial factor behind a rise in
price.

Were it not for *Gen Rights*, I would
conclude that Plaintiffs have standing to
challenge the Jones Act. At a minimum,
Plaintiffs allege that the Jones Act limits



MICROSOFT CORPORATION,
Plaintiff-Appellee,

v.

MOTOROLA, INC.; Motorola Mobility,
Inc.; General Instrument Corporation,
Defendants-Appellants.

No. 14-35393

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted April 8, 2015.

Filed July 20, 2015.

Background. Software brought
breach of contract action, alleging that pat-
ents improperly refused to offer it licens-
es for use of foreign and domestic stan-

Attorneys' Fees as Damages: RAND

"The attorneys' fees and costs incurred in defending the injunctive actions were, in essence, such mitigation, and so are **recoverable expenses of reasonable mitigating actions.**

"The RAND context is analogous to these various circumstances in which attorneys' fees expended in earlier litigation are collectible as damages for a proven legal injury. As the district court reasoned, **treating fees in separate lawsuits as damages where the RAND commitment is breached 'makes particular sense in light of the purpose of the RAND commitment**, which is to encourage widespread adoption of the standard.' That purpose would be substantially defeated if adopting the standard "would expose [potential implementors] to bad faith injunctive relief claims and they were **forced to absorb the cost of defending themselves.**"

(Citations omitted; emphasis added.)

Microsoft v. Motorola,
795 F.3d 1024, 1050–51
(9th Cir. 2015)

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Contract Claims: Nominal Damages



“The court concludes that *Aguilera* and *Ruiz*, which are not binding on this court on questions of California law, **do not defeat a plaintiff’s ability to recover nominal damages for breach of contract** even in the absence of actual damages. Plaintiffs, therefore, have alleged ‘a legal wrong that is fully distinct from the actual damages.’ *Sweet*, 169 Cal.App.2d at 632, 337 P.2d 499.”

In re Facebook Priv. Litig.
192 F. Supp. 3d 1053, 1061-62
(N.D. Cal. 2016)

DISH Amended Counterclaims

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19 Defendants. Plaintiff's ANSWER
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28 Plaintiff's ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO COMPLAINT
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15 62. DISH Technologies sells the DISH “Hopper” and “Joey” – products
16 implicated in Entropic’s Complaint. According to the explicit terms of the MoCA
17 IPR policy, DISH Technologies thus shall be “entitled” to require Entropic and/or
18 MaxLinear to license patents essential to MoCA Standards on RAND terms. DISH
19 Technologies therefore has standing to bring claims to enforce the terms of the IPR
20 Policy.

DISH Counterclaim Complaint

D.I. 316 at 82

FISH.
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DISH Amended Counterclaims

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21 63. Moreover, **DISH Technologies has been harmed by Entropic's and**
22 **MaxLinear's wrongful behavior. Entropic's failure to license on RAND terms,**
23 **MaxLinear's failure to include RAND encumbrances in its assignment to Entropic,**
24 **and the other wrongful acts undertaken by Entropic and MaxLinear, has harmed DISH**
25 **Technologies' ability to sell its product, including by raising its costs through this**
26 **lawsuit.** Moreover, **DISH Technologies has also suffered diminution of reputation in**
27 **the marketplace, including its reputation as an innovator.** These harms underline
28 **DISH Technologies' standing to enforce the terms of the MoCA IPR policy.**

DISH Counterclaim Complaint
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Challenges to the Sufficiency of DISH's Pleadings

Three Broad Categories of Claims

- Contract-Related Claims (Counts I-IV)
- Fraud-Related Claims (Counts V-VII)
- Antitrust-Related Claims (Counts VIII-XI)

Contract Claims

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28 NETWORK SERVICE LLC; AND
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21 97. To the extent the MoCA IPR Policy imposes any obligations on DISH,
22 DISH has discharged them. By way of example, DISH made a request, in writing,
23 for a RAND-complaint license offer.

DISH Counterclaim Complaint
D.I. 316

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Contract Claims

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Case No. 2:23-cv-1043-JWH-KES
Court No. 2:23-cv-1043-JWH-KES
Judge Hon. John W. Holcomb
Magistrate Judge Hon. Karen E. Scott

DISH Counterclaim Complaint
D.I. 316

24 98. Entropic has breached section 5.1.1 of the MoCA IPR Policy. Section
25 5.1.1 provides that Entropic must “offer to license” its “Essential Patent Claims to the
26 extent necessary to use, make, have made, offer for sale, sell, and import” products
27 complaint with MoCA standards on a “non-exclusive, non-sub-licensable, world
28 wide” basis “on fair, reasonable and nondiscriminatory terms and conditions
1 (collectively, ‘**RAND**’) . . .” Entropic has breached section 5.1.1 at least because it
2 has failed to provide DISH with a RAND-compliant license offer.
3 99. Entropic has also breached section 7.2 of the MoCA IPR Policy. Section
4 7.2 provides that “terminated Alliance Part[ies] shall be entitled to request or require
5 any Alliance Party to license such Alliance Party’s Essential Patent Claims under
6 Section 5.1 (RAND Licenses), but only to the extent necessary to use, make, have
7 made, offer for sale, sell and import” products complaint with MoCA standards
8 “approved by the Board of Directors prior to such expiration or termination.” To the
9 extent DISH products implement any part of any MoCA Standard, Entropic has
10 breached section 7.2 at least because it has failed to provide DISH with a RAND-
11 compliant license offer.

Contract Claims

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9	IN THE UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION
10	ENTROPIC COMMUNICATIONS, LLC, Plaintiff v. DISH NETWORK CORPORATION, DISH NETWORK LLC, DISH NETWORK SERVICE LLC, AND DISH NETWORK CALIFORNIA SERVICE CORPORATION, Defendants.
11	Defendants' Counterclaim to Plaintiff's Complaint JURY TRIAL DEMANDED District Judge: Hon. John W. Holcomb Magistrate Judge: Hon. Karen E. Scott
12	DISH'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO COMPLAINT Case No. 2:23-cv-1043-JWH-KES

DISH Counterclaim Complaint D.I. 316

14 108. MaxLinear has breached Section 5.1.2 of the MoCA IPR Policy. Section
15 5.1.2 provides that “[a]ny sale, assignment or transfer by an Alliance Party . . . to an
16 unaffiliated third party of an Essential Patent Claim shall be subject to the terms in
17 this IPR Policy” and “any agreement for transferring or assigning Essential Patent
18 Claims include a provision that such transfer or assignment is subject to existing
19 licenses and obligations to license imposed on the Alliance Party by this Agreement
20 and the Alliance Bylaws.” MaxLinear breached Section 5.1.2 at least because it failed
21 to transfer the Asserted Patents “subject to the terms” of the IPR Policy, nor did
22 MaxLinear include any provision in the agreement transferring the Asserted Patents
23 to Entropic that the transfer was subject to the obligations imposed by the MoCA IPR
24 Policy.

25 109. MaxLinear has also breached Section 4.1.2 of the MoCA IPR Policy. In
26 Section 4.1.2, MaxLinear “represent[ed], warrant[ed], and agree[d] that it has not and
27 will not intentionally transfer or otherwise encumber its patents that reasonably may
28 contain Essential Patent Claims for the purpose of circumventing the obligation to
1 grant licenses contained in this IPR Policy.” MaxLinear breached Section 4.1.2 by
2 transferring the Asserted Patents without requiring Entropic to agree to license the
3 Asserted Patents on RAND terms and (as described more fully below) by attempting
4 to intentionally circumvent the RAND promise.

Contract Claims

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13 IN THE UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

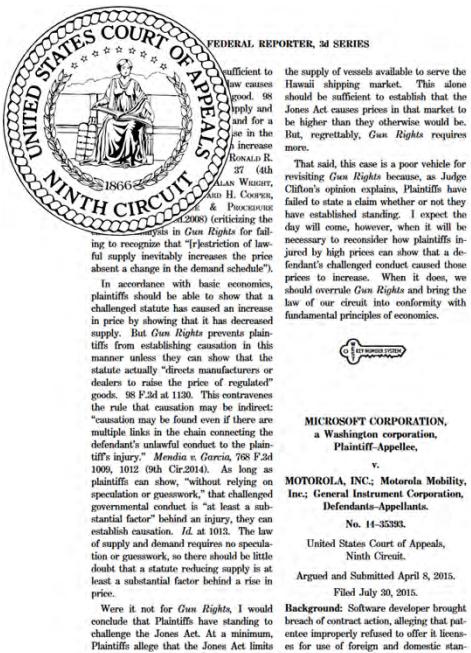
15 ENTERTAINMENT COMMUNICATIONS, LLC. Plaintiff
16 v. DISH NETWORK CORPORATION; DISH NETWORK SERVICE LLC; AND DISH NETWORK CALIFORNIA SERVICE CORPORATION. Defendants.

17 Case No. 2:23-cv-1043-JWH-KES
18 DEFENDANTS DISH NETWORK CORPORATION; DISH NETWORK SERVICE LLC'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT
19 DEFENDANT DISH NETWORK CALIFORNIA SERVICE CORP.'S FIRST AMENDED ANSWER, AFFIRMATIVE DEFENSES AND PLAINTIFF'S COMPLAINT
20 JURY TRIAL DEMANDED
21 District Judge: Hon. John W. Holcomb
22 Magistrate Judge: Hon. Karen E. Scott
23 DISH'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO COMPLAINT
24 Case No. 2:23-cv-1043-JWH-KES

5 110. DISH has been harmed by MaxLinear's breach of the MoCA IPR Policy.
6 By way of example, DISH is forced to expend considerable sums of money and other
7 resources to defend itself in the present suit—resources that would not have had to
8 expend had MaxLinear complied with the terms of the MoCA IPR Policy. DISH has
9 also suffered diminution of reputation in the marketplace. DISH is entitled to recover
10 these damages, as well as any additional relief that may be appropriate or required to
11 address MaxLinear's breach.

DISH Counterclaim Complaint
D.I. 316

Contract Claims



Microsoft v. Motorola,
795 F.3d at 1049-1050.

“Motorola's arguments, however, elide a critical factor in determining the propriety of attorneys' fees in the damages award in this case. The fees at issue here were incurred not in the current breach of contract action but in defending against the injunctive action found to have breached the RAND agreement. **The fees sought are thus distinct from the same-suit fees generally banned by the American rule.** As losses independent of the current litigation and triggered by the contract-breaching conduct, they are best characterized as recoverable consequential contract damages—the kind of damages ordinarily recoverable in breach of contract suits.”

“**Moreover, courts routinely award attorneys' fees as damages in a number of analogous circumstances, when attorneys' fees are a fair measure of the harm impermissibly caused by the defendant.**”

Anti-Trust Claims



U. S. INDIAN HEAD, INC. 1981
...for escaping to prevent infiltration of polyvinyl chloride market in India
...The United States Court of Appeals
For the Second Circuit, of New
York, U.S. Court of Appeals, 2d Cir.,
A. J. H. Esposito, J., entered judgment
upholding the finding of the District
Court that defendant, and polyvinyl chloride
manufacturers, and polyvinyl chloride
and related, and software was conspired
to restrain competition in the market for
polyvinyl chloride in India. Justice
Brennan, held that efforts to influence set
of standards, which were eventually adopted
by the Indian government, were not quali-
fied for "Market conspiracy".
Affirmed.

Judicial Watch, Inc. (Monitoring opinion
in Indian Head, Inc. v. U.S. Court of Appeals
for the Second Circuit, joined).

1. **Marketplace** (HD-101)

General effects is restrain or escape
of trade by preventing government offi-
cials from taking action to prevent
antitrust immunity doctrine.

2. **Marketplace** (HD-103)

Some general market. Some spe-
cial effects depend on source, con-
tent, and source of anticompetitive restric-
tion and its effect.

3. **Marketplace** (HD-103)

These bring governmental action, or
oppressive governmental action, that results in
restraint of trade or monopolization effec-
tive to restrain or escape of trade by prevent-
ing anticompetitive restraint. Sherman
Antitrust Act, § 1, 15 U.S.C.A. § 1.

4. **Marketplace** (HD-103)

Anticompetitive restraint resulting di-
rectly from private action cannot form ba-
sis for antitrust immunity doctrine. Restraint
of trade is deemed to result effort to infe-
ct antitrust immunity doctrine. Sherman
Antitrust Act, § 1, 15 U.S.C.A. § 1.

486 U.S. 492, 500 1.5825-97

...**Allied Tube & Conduit**

Corporation, Plaintiff

v.

INDIAN HEAD, INC.

Na. 85-885.

Argued Feb. 24, 1988

Decided June 15, 1988

Manufacture of polyvinyl chloride
products brought antitrust action
against manufacturer of steel sheets.
15825-97

Allied Tube v. Indian Head, Inc.,

486 U.S. 492, 500 (1988)

“Agreement on a product standard is, after all, implicitly an agreement not to manufacture, distribute, or purchase certain types of products. Accordingly, private standard-setting associations have traditionally been objects of antitrust scrutiny.”

“[T]he hope of procompetitive benefits depends upon the existence of safeguards sufficient to prevent the standard-setting process from being biased by members with economic interests in restraining competition.”

Anti-Trust Claims



Recognizes that *Allied Tube* “implies that, without safeguards against bias, the very existence of standards is inherently anti-competitive.”

“Both the Third Circuit, in *Broadcom*, and the Supreme Court, in *Allied Tube*, have stated that standards, without the proper safeguards, are inherently anticompetitive. It follows that when an entity side-steps these safeguards in an effort to return the standard to its natural anti-competitive state, anti-competitive effects are inevitable.”

RIM Ltd. v. Motorola, Inc.
644 F. Supp. 2d 788, 795
(N.D. Tex. 2008)

Anti-Trust Claims



FEDERAL REPORTER, 3d SERIES

ISGG
NINTH CIRCUIT
Sufficient to
law causes
goods. 98
Jones Act causes
market to
higher than
otherwise would be.
respectfully, *Own Rights*
more.

That said, this case is a poor vehicle for revisiting *Own Rights* because, as Judge Clifton's opinion explains, Plaintiffs have failed to establish standing. I hope that day will come, however, when it will be necessary to reconsider how plaintiffs injured by high prices can show that a defendant's illegal product caused those prices to increase. When it does, we should overrule *Own Rights* and bring the law of our circuit into conformity with fundamental principles of economics.



MICROSOFT CORPORATION,
Plaintiff-Appellee,
v.

MOTOROLA, INC.; Motorola Mobility,
Inc.; General Instrument Corporation,
Defendants-Appellants.

No. 14-35393
United States Court of Appeals,
Ninth Circuit.
Argued and Submitted April 8, 2015.
Filed July 20, 2015.

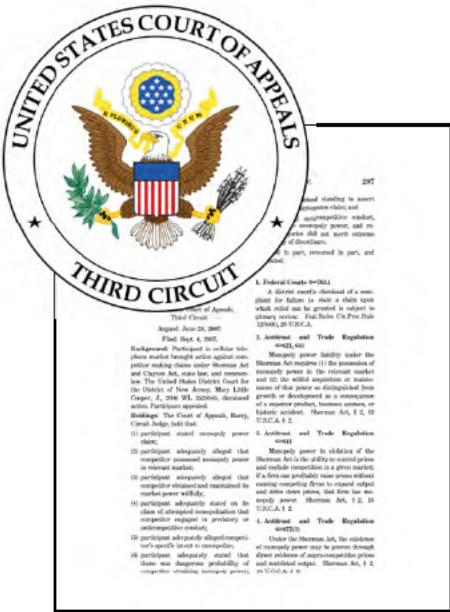
Background. Software brought
breach of contract action, alleging that pat-
ents improperly refused to offer it licens-
es for use of foreign and domestic stan-

“The development of standards thereby creates an opportunity for companies to engage in anti-competitive behavior. Most notably, once a standard becomes widely adopted, SEP holders obtain substantial leverage over new product developers, who have little choice but to incorporate SEP technologies into their products. Using that standard-development leverage, the SEP holders are in a position to demand more for a license than the patented technology, had it not been adopted by the SSO, would be worth.”

Microsoft v. Motorola,
795 F.3d 1024, 1030–31
(9th Cir. 2015)

FISH.
FISH & RICHARDSON

Anti-Trust Claims



“We hold that (1) in a consensus-oriented private standard-setting environment, (2) a patent holder's intentionally false promise to license essential proprietary technology on FRAND terms, (3) coupled with an SDO's reliance on that promise when including the technology in a standard, and (4) the patent holder's subsequent breach of that promise, is actionable anticompetitive conduct.”

Broadcom Corp. v. Qualcomm Inc.
501 F.3d 297, 314 (3d Cir. 2007)

Anti-Trust Claims



“The crux of the claim is Funai’s assertion that Defendants lied to the IEEE and ITU in order to induce those SSOs to incorporate Defendants’ technologies into the 802.11 standard for wireless Internet connectivity and the H.264 standard for video compression. . . . Those allegations, separate and apart from Funai’s allegations regarding the ITC Action and District Court Action, are sufficient to give rise to a Section 2 claim.”

Funai Elec. Co. v. LSI Corp.,
2017 WL 1133513, at *5
(N.D. Cal. Mar. 27, 2017)

Anti-Trust Claims

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15 ENTROPIC COMMUNICATIONS, LLC. Case No. 2:23-cv-1043-JWH-KES
16 Plaintiff
17 v. Defendants DISH NETWORK CORPORATION; DISH NETWORK
18 CORPORATION; DISH NETWORK CALIFORNIA SERVICE LLC.'S ANSWER
19 AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT
20 DISH NETWORK CORPORATION; DISH
21 NETWORK SERVICE LLC; DISH
22 NETWORK CALIFORNIA
23 SERVICE CORPORATION.
24 Defendants. Plaintiff's COMPLAINT
25 DEFENDANT DISH NETWORK
26 CALIFORNIA SERVICE CORP.'S FIRST AMENDED ANSWER
27 AFFIRMATIVE DEFENSES AND
28 COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT
JURY TRIAL DEMANDED
District Judge: Hon. John W. Holcomb
Magistrate Judge: Hon. Karen E. Scott
DISH'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO COMPLAINT
Case No. 2:23-cv-1043-JWH-KES

24 144. As discussed above, MaxLinear executed a Patent Purchase Agreement
25 with Entropic that transferred ownership of the Asserted Patents. As also discussed
26 above (see paragraphs 124-131) MaxLinear and Entropic entered into this agreement
27 in an attempt to "wash" the Asserted Patents of any obligation to license on RAND
28 terms, despite each's obligation to do so pursuant to the MoCA IPR Policy.
oo

DISH Counterclaim Complaint
D.I. 316

Anti-Trust Claims

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21 ENTROPIC COMMUNICATIONS, LLC. Case No. 2:23-cv-1043-JWH-KES
22 Plaintiff
23 v.
24 DISH NETWORK CORPORATION;
25 DISH NETWORK LLC; DISH
26 NETWORK SERVICE LLC; AND
27 DISH NETWORK CALIFORNIA
28 SERVICE CORPORATION. Defendants.
29
30 Defendants DISH NETWORK
31 CORPORATION; DISH NETWORK
32 LLC; DISH NETWORK SERVICE
33 LLC's ANSWER, AFFIRMATIVE
34 DEFENSES AND COUNTERCLAIMS
35 TO PLAINTIFF'S COMPLAINT
36
37 Defendants DISH NETWORK
38 CALIFORNIA SERVICE CORP.'S
39 FIRST AMENDED ANSWER,
40 AFFIRMATIVE DEFENSES AND
41 COUNTERCLAIMS TO PLAINTIFF'S
42 COMPLAINT
43 JURY TRIAL DEMANDED
44 District Judge: Hon. John W. Holcomb
45 Magistrate Judge: Hon. Karen E. Scott
46
47 DISH'S ANSWER, AFFIRMATIVE DEFENSES AND
48 COUNTERCLAIMS TO COMPLAINT
49 Case No. 2:23-cv-1043-JWH-KES

DISH Counterclaim Complaint
D.I. 316

13 146. Competition in the relevant markets has been injured as a result of
14 Entropic's and MaxLinear's behavior. By way of example, MaxLinear's and
15 Entropic's behavior forces the providers of home television services to engage in
16 expensive litigation (rather than negotiate a RAND license)—costs that must
17 eventually be passed on to end-users. Moreover, if Entropic gets its demand for \$1
18 billion, those costs must also be additionally passed on to end-users of home television
19 services, further driving up the costs. These additional costs reduce or eliminate the
20 potential price benefit to consumer that MoCA based networking provides as
21 compared to competing technologies, such as recent generations of WiFi based
22 products. Meanwhile, MaxLinear is able to charge a higher rate for its own MoCA
23 compatible products due to the artificial inflation of market prices.